

FOURTEENTH COURT OF APPEALS OF TEXAS

Citibank N.A. as Trustee for NRZ Pass-Through Trust VI and Newrez LLC F/K/A New Penn Financial LLP D/B/A Shellpoint Mortgage Servicing v. Pechua, Inc.

Citibank v. Pechua · No. No. 14-19-00337-CV · Decided April 27, 2021

SUMMARY

In this concurring opinion, the Fourteenth Court of Appeals joins the court's holding that common-law tolling applies in the trial-court proceeding during the pendency of a bankruptcy automatic stay. The concurrence suggests that the Supreme Court of Texas promulgate a procedural rule addressing trial-court proceedings similar to Texas Rule of Appellate Procedure 8, because debtors may not ensure timely action after the stay terminates.

CASE DETAILS

COURT	Fourteenth Court of Appeals of Texas
WRITING FOR THE COURT	Charles A. Spain; Ken Wise; Jerry Bourliot
JURISDICTION	Texas
DECIDED	April 27, 2021
DOCKET	No. 14-19-00337-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of the 215th District Court of Harris County, Texas, in which the Fourteenth Court of Appeals affirmed as modified.
PRECEDENTIAL VALUE	Published opinion; the extracted text is a concurring opinion.
PARTIES	Citibank N.A. as Trustee for NRZ Pass-Through Trust VI, Newrez LLC f/k/a New Penn Financial LLP d/b/a Shellpoint Mortgage Servicing v. Pechua, Inc.

TOPICS

[automatic stay](#) [appellate procedure](#) [bankruptcy](#) [civil procedure](#)

PRACTICE AREAS

[Bankruptcy](#) [Civil procedure](#) [Appellate procedure](#)

QUESTIONS PRESENTED

1. Whether the bankruptcy automatic stay creates common-law tolling in a state trial-court proceeding.
2. Whether Texas should adopt a trial-court procedural rule comparable to Texas Rule of Appellate Procedure 8 to address proceedings affected by the bankruptcy automatic stay.

HOLDINGS

1. The court held that common-law tolling applies in this trial-court proceeding while the bankruptcy automatic stay is in effect.

KEY QUOTATIONS

“I join the court’s opinion and concur only to suggest the Supreme Court of Texas promulgate a Texas Rule of Civil Procedure like Texas Rule of Appellate Procedure 8.” (at 2)

“While I join the court in holding there is common-law tolling in this trial-court proceeding, there is an underlying problem that a debtor in bankruptcy is not likely to pay state trial-court counsel to monitor the bankruptcy proceeding and take timely action once the automatic stay in bankruptcy no longer applies.” (at 2)

FACTUAL BACKGROUND

The opinion concerns state-court proceedings affected by a debtor’s bankruptcy and the automatic stay under 11 U.S.C. § 362. The concurrence focuses on the problem of determining when the automatic stay no longer applies and how a debtor or counsel should take timely action in the trial court after the stay ends.

PROCEDURAL HISTORY

The case was appealed from the 215th District Court of Harris County in trial court cause number 2016-83417. The appellate court affirmed the judgment as modified. The concurrence addressed the effect of a bankruptcy automatic stay on state trial-court proceedings and appellate deadlines.

DISPOSITION

affirmed

CASES CITED

- Continental Casing Corp. v. Samedan Oil Corp., 751 S.W.2d 499, 501 (Tex. 1988)
- Chunn v. Chunn, 929 S.W.2d 490, 493 (Tex. App.—Houston [1st Dist.] 1996, order)
- Raley v. Lile, 861 S.W.2d 102, 104–05 (Tex. App.—Waco 1993, writ denied)
- Nautical Landings Marina, Inc. v. First Nat’l Bank, 791 S.W.2d 293, 296 (Tex. App.—Corpus Christi 1990, writ denied)